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Reply to New York office

April 7, 2014

VIA ECF ONLY

Hon. Arthur D. Spatt
United States District Court
100 Federal Plaza
Central Islip, New York 11722

**Re: Chiquita Fresh North America, LLC v. Long Island Banana Corp;
Case No. 14-cv-982**

Honorable Sir:

We are the attorneys for plaintiffs in the above-referenced matter. Pursuant to your Honor's direction at this morning's hearing, plaintiffs respectfully request an order directing defendants to provide our office with the following fact discovery in advance of the hearing scheduled for May 14, 2014:

1. Any and all documents or things in the possession, custody or control of defendants, their agents and attorneys related to the purchase by Brook Enterprises, Ltd. of the property located at 596 Merrick Road, Lynbrook, New York (the "Premises") including but not limited to written agreements, closing statements, checks, corporate resolutions and powers of attorney;

2. Any and all documents or things in the possession, custody or control of defendants, their agents and attorneys related to the sale of the Premises by Brook Enterprises, Ltd., including but not limited to written agreements, closing statements, checks, corporate resolutions and powers of attorney;

3. Any and all documents or things in the possession, custody or control of defendants, their agents and attorneys related to the acquisition by Thomas J. Hoey, Jr. of the stock or other ownership interests in Brook Enterprises, Ltd., including but not limited to written agreements, closing statements, checks, corporate resolutions and stock certificates;

4. Any and all documents or things defendants plan to offer for identification or evidence at the hearing scheduled for May 14, 2014; and

5. The oral examination under oath of Thomas J. Hoey, Jr. pursuant to Fed. R. Civ. P. 30.

Hon. Arthur D. Spatt
April 7, 2014
Page 2 of 2

Although defendants bear the burden of proving that the property located at 596 Merrick Road was not a PACA trust asset, *In re: Kornblum & Co., Inc.*, 81 F.3d 280, 287 (2d Cir.1996), it is respectfully requested that defendants be directed to provide our office with these documents no later than May 1, 2014 so that we can review the documents in advance of any deposition of Thomas J. Hoey, Jr. In addition, should it appear that plaintiffs will be required to subpoena additional documents, plaintiffs would need time to affect service of the subpoena and allow the receiving party time to supply any relevant records.

Thank you for your attention to this matter.

Respectfully yours,
McCarron & Diess

By: 

Gregory Brown

cc.: All Counsel of Record (via ECF)